

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

FIRST REGULAR SESSION
FIFTY-SEVENTH LEGISLATURE

EIGHTY-SEVENTH LEGISLATIVE DAY
WEDNESDAY, APRIL 2, 2003

Senate Chamber

President Risch called the Senate to order at 9 a.m.

Roll call showed all members present except Senators Bunderson, Burkett, Cameron, Compton, Darrington, Ingram, Marley, McWilliams, Noh, and Stennett, absent and excused.

Prayer was offered by Chaplain Gene Arnold.

The Pledge of Allegiance was led by Nicole Stevenson, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

Senators Bunderson, Darrington, Noh, and Stennett were recorded present at this order of business.

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of April 1, 2003, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Little, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senators Burkett, Cameron, and McWilliams were recorded present at this order of business.

April 1, 2003

The JUDICIARY AND RULES Committee reports that **S 1136**, as amended, and **S 1167** have been correctly enrolled.

DARRINGTON, Chairman

The President signed Enrolled **S 1136**, as amended, and **S 1167** and ordered them transmitted to the House for the signature of the Speaker.

April 1, 2003

The JUDICIARY AND RULES Committee reports that Enrolled **S 1122**, as amended in the House, was delivered to the Office of the Governor at 2:30 p.m., April 1, 2003.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

April 1, 2003

The EDUCATION Committee reports it has had under consideration the Gubernatorial appointment listed below and the Committee recommends that said appointment be confirmed by the Senate:

Laird Stone to the Idaho State Board of Education, term to expire March 1, 2008.

SCHROEDER, Chairman

The Gubernatorial appointment was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

April 1, 2003

The EDUCATION Committee reports out **H 367** with the recommendation that it do pass.

SCHROEDER, Chairman

H 367 was filed for second reading.

April 1, 2003

The TRANSPORTATION Committee reports out **HJM 10** with the recommendation that it do pass.

INGRAM, Chairman

HJM 10 was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator Little, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

Senators Compton and Marley were recorded present at this order of business.

April 1, 2003

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to advise you that I have signed today and am transmitting to the Secretary of State the following Senate Bills, to wit:

S 1150, S 1156

Sincerely,
/s/ Dirk Kempthorne
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 1, 2003

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I hereby advise you that I am returning to you, without my approval, disapproved and vetoed, the following Senate Bill to wit:

S 1151

within the time limited by law, the same having arrived in the Office of the Governor at the hour of 11:15 a.m. on March 27, 2003.

I. INTRODUCTION

In the fourth consecutive year of drought, it would be shortsighted to make budget cuts that go this deep in the agency that administers the lifeblood of Idaho - our water.

Senate Bill 1151 would threaten the ability of the Idaho Department of Water Resources to proceed in a manner that is consistent with the philosophy and vision that this administration has pursued over the past four years. A large part of that vision is centered upon the ability of our state to maintain control over our destiny through limiting the federal government's role in those activities that we deem essential as it relates to Idaho's water.

II. DISCUSSION

Under this legislation, the Department would have lost the ability to implement and carry out critical functions that support drought emergencies, the Snake River Basin Adjudication, the Stream Channel Protection Program, the Comprehensive State

Water Plan, Comprehensive River Basin Plans, and the development of parameters supporting minimum stream flow determinations. The voids created would essentially transfer more control to the Federal government. This would be contrary to the objectives we have as a sovereign state.

1. Drought Emergencies

I am concerned about the Department's ability to assist communities responding to drought emergencies in an expedited fashion. It is important that the Department retain sufficient resources to provide planning assistance to communities, particularly to smaller communities, that will likely experience a loss of water supplies this summer because of declining ground water levels resulting from the cumulative effects of four years of drought.

When wells go dry and ground water levels drop, the Department of Water Resources must be in the position to respond decisively to these issues. State government must be on the front line to ensure that the processes can move forward allowing for deeper wells to be drilled, water rights to be temporarily transferred where appropriate, or other alternatives for providing water supply replacements.

These cuts into the Department's budget would impact their ability to perform this function. Two years ago I signed into law Senate Bill 1122 that allowed expedited approval of temporary transfers to make effective use of short water supplies, and I cannot allow these processes to be compromised.

Under this temporary transfer, the location of the point of diversion, place of use, or nature of use can be changed for the remainder of the irrigation season. The essence of this bill was to provide for an expedited process because time was critical for these ranchers, farmers, and communities impacted by the continuing drought.

It is no different today. Time is still of the essence. Our municipalities, industries, and agricultural communities must have the assurance that when they need this essential function of government, it will work for them without unnecessary impediments.

2. Snake River Basin Adjudication

The Snake River Basin Adjudication (SRBA) continues to remain a priority for the State of Idaho.

In my veto message of Senate Bill 1143, I reaffirmed Idaho's commitment to finishing this process on schedule. I indicated my objections to legislation that would have even remotely impeded our progress on the SRBA, and the provisions under that negative supplemental would have done just that.

In its current form, **Senate Bill 1151** does not provide funding for the Department's rollout costs. This would result in the elimination of two positions dedicated to the SRBA, which is unacceptable. As a part of my action today I am continuing to preserve the adjudication process in a manner that will allow us to move forward and close the book on this chapter of Idaho's water history.

3. Stream Channel Protection Program

As a matter of principle and priority, the State of Idaho should not abdicate its authority for the Stream Channel Protection Program to the regulatory programs of the U.S. Army Corps of Engineers under the Federal Clean Water Act. We have fought long and hard to retain control of this essential program. Any time the state has the opportunity to maintain primacy, or work collaboratively with a federal agency we must aggressively do so.

Over the past year I have instructed the Department to pursue other funding sources for this critical program. They have begun discussions with the federal agencies, including the U.S. Army Corps of Engineers that could provide cost share funding for the Stream Channel Protection Program. This however, would still require a general fund obligation to be met by the State of Idaho.

4. The Comprehensive State Water Plan

The Comprehensive State Water Plan lays out our policy with respect to how Idaho's water resources and waterways will be managed in a manner consistent with the public's interest. The crowning function of this process is the River Basin Plans that we have aggressively pursued. To date, we have completed nine Comprehensive River Basin Plans that cover about one-fourth of the state.

Last year I signed into law the ninth River Basin plan, which was a milestone piece of legislation. The Little Salmon River Basin Plan was Idaho's first comprehensive basin strategy that protected anadromous fisheries under state (not federal) designation. We accomplished this objective by protecting 68 miles of streams and 576 square-miles of the river basin in Adams and Idaho County.

The cuts to the Department proposed in this bill would effectively halt any further proactive measures such as this. In fact, two additional Comprehensive River Basin Plans are scheduled for completion this year that will require legislative approval next year. In addition, we have executed a memorandum of understanding with the U.S. Forest Service to implement collaborative land and water resource planning that replaces channel maintenance water right claims filed by the U.S. Forest Service in the SRBA. Without this tool in our toolbox, the state will lose its ability to appropriately manage valuable stretches of rivers under state law rather than have them unilaterally managed under Federal law.

5. Minimum Stream Flow Determinations

Under **Senate Bill 1151** we would have also lost the resources needed to properly formulate minimum stream flows such as was done in 2002 for the Lemhi River. Using state law, we successfully implemented a 35 cubic feet per second (CFS) minimum stream flow rather than the 60 CFS sought by the federal government under authorities derived from the Endangered Species Act. The most important policy element of this arrangement was the fact that we accomplished this through a collaborative process that protected farming and ranching interests and also respected Idaho's water law.

III. CONCLUSION

If I allow **Senate Bill 1151** to become law, then I will have abandoned my commitment to Idaho's ability to expeditiously ensure that there are minimal interruptions of municipal water supplies in drought stricken areas and to maintain the resources needed to timely complete the SRBA. This action also reaffirms my commitment to the environment, our threatened and endangered species, and more importantly, a collaborative process that works.

For these reasons, I hereby withhold my approval from, disapprove, and veto **Senate Bill 1151**.

Sincerely,
/s/ Dirk Kempthorne
Governor

The question being, "Shall **S 1151** become law, the Governor's veto notwithstanding?"

Senator Davis requested unanimous consent that **S 1151** be recommitted to the Finance Committee.

Senator Burkett objected.

Moved by Senator Davis, seconded by Senator Cameron, that **S 1151** be recommitted to the Finance Committee. The question being, "Shall the motion prevail?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burtenshaw, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Keough, Little, Lodge, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Sweet, Williams. Total - 28.

NAYS--Burkett, Calabretta, Kennedy, Malepeai, Marley, Stennett, Werk. Total - 7.

Total - 35.

More than two-thirds having voted in the affirmative, the President declared the motion had prevailed, and **S 1151** was recommitted to the Finance Committee.

The correspondence from the Governor was ordered filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

April 1, 2003

Mr. President:

I transmit herewith **H 388** and **H 376**, and I return herewith **S 1160**, which have passed the House.

JUKER, Chief Clerk

H 388 and **H 376** were filed for first reading.

S 1160 was referred to the Judiciary and Rules Committee for enrolling.

April 1, 2003

Mr. President:

I transmit herewith Enrolled **H 302**, **H 269**, as amended, and **H 273** for the signature of the President, and I return herewith Enrolled **S 1002**, as amended, **S 1010**, as amended, **S 1028**, **S 1079**, **S 1082**, **S 1097**, **S 1108**, as amended, as amended, **S 1119**, **S 1121**, **S 1127**, **S 1137**, **S 1139**, and **S 1166**, which have been signed by the Speaker.

JUKER, Chief Clerk

The President signed Enrolled **H 302**, **H 269**, as amended, and **H 273** and ordered them returned to the House.

Enrolled **S 1002**, as amended, **S 1010**, as amended, **S 1028**, **S 1079**, **S 1082**, **S 1097**, **S 1108**, as amended, as amended, **S 1119**, **S 1121**, **S 1127**, **S 1137**, **S 1139**, and **S 1166** were referred to the Judiciary and Rules Committee for transmittal to the Office of the Governor.

On request by Senator Little, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions, and Memorials

H 388, by Ways and Means Committee, was introduced, read the first time at length, and referred to the State Affairs Committee.

H 376, by Ways and Means Committee, was introduced, read the first time at length, and referred to the Commerce and Human Resources Committee.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

H 335, as amended, **H 336**, as amended, **H 337**, **H 338**, and **H 369**, by Ways and Means Committee, were read the second time at length and filed for third reading.

H 279, by Revenue and Taxation Committee, was read the second time at length and filed for third reading.

S 1178, **SJR 101**, **S 1177**, and **S 1176**, by State Affairs Committee, were read the second time at length and filed for third reading.

H 358, by State Affairs Committee, was read the second time at length and filed for third reading.

S 1115, as amended in the House, by Judiciary and Rules Committee, was read the second time at length and filed for third reading.

The Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

S 1175 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Richardson arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burtenshaw, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Little, Lodge, Malepeai, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Sweet, Werk, Williams. Total - 30.

NAYS--Burkett, Calabretta, Keough, Marley, Stennett. Total - 5.

Total - 35.

Whereupon the President declared **S 1175** passed, title was approved, and the bill ordered transmitted to the House.

H 167, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Kennedy arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk. Total - 33.

NAYS--Burtenshaw, Williams. Total - 2.

Total - 35.

Whereupon the President declared **H 167**, as amended, passed, title was approved, and the bill ordered returned to the House.

H 333 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Little arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Bailey, Brandt, Burkett, Calabretta, Cameron, Compton, Gannon, Goedde, Ingram, Kennedy, Keough, Little, Lodge, McKenzie, McWilliams, Schroeder, Sorensen, Stegner, Stennett, Werk. Total - 20.

NAYS--Andreason, Bunderson, Burtenshaw, Darrington, Davis, Geddes, Hill, Malepeai, Marley, Noble, Noh, Pearce, Richardson, Sweet, Williams. Total - 15.

Total - 35.

Whereupon the President declared **H 333** passed, title was approved, and the bill ordered returned to the House.

H 144, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Goedde arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Cameron, Compton, Gannon, Goedde, Hill, Little, Lodge, Schroeder, Sorensen, Sweet. Total - 14.

NAYS--Burkett, Burtenshaw, Calabretta, Darrington, Ingram, Kennedy, Keough, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Stennett, Werk, Williams. Total - 18.

Absent and excused--Davis, Geddes, Stegner. Total - 3.

Total - 35.

Whereupon the President declared that **H 144**, as amended, had failed to pass the Senate, and ordered the bill returned to the House.

The President called Senator Lodge to the Chair.

H 17, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Ingram arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Gannon, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noh, Pearce, Richardson, Schroeder, Sorensen, Stennett, Sweet, Werk, Williams. Total - 31.

NAYS--None.

Absent and excused--Davis, Geddes, Noble, Stegner. Total - 4.

Total - 35.

Whereupon the Acting President declared **H 17**, as amended, passed, title was approved, and the bill ordered returned to the House.

H 198, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senators Stennett and Bunderson arose as co-sponsors of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Gannon, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Richardson, Schroeder, Sorensen, Stennett, Werk, Williams. Total - 27.

NAYS--Bailey, Noble, Noh, Pearce, Sweet. Total - 5.

Absent and excused--Davis, Geddes, Stegner. Total - 3.

Total - 35.

Whereupon the Acting President declared **H 198**, as amended, passed, title was approved, and the bill ordered returned to the House.

The President returned to the Chair.

H 377 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Richardson arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Bailey, Brandt, Burtenshaw, Cameron, Darrington, Gannon, Goedde, Hill, Ingram, Keough, Little, Lodge, McKenzie, Noble, Pearce, Richardson, Sorensen, Sweet, Williams. Total - 19.

NAYS--Andreason, Bunderson, Burkett, Calabretta, Compton, Kennedy, Malepeai, Marley, McWilliams, Noh, Schroeder, Werk. Total - 12.

Absent and excused--Davis, Geddes, Stegner, Stennett. Total - 4.

Total - 35.

Whereupon the President declared **H 377** passed, title was approved, and the bill ordered returned to the House.

H 384 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Cameron arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk, Williams. Total - 34.

NAYS--Andreason. Total - 1.

Total - 35.

Whereupon the President declared **H 384** passed, title was approved, and the bill ordered returned to the House.

On request by Senator Noh, granted by unanimous consent, **H 283**, as amended, retained its place on the Third Reading Calendar for Friday, April 4, 2003.

H 83 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Brandt arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Sorensen, Stegner, Stennett, Sweet, Werk, Williams. Total - 33.

NAYS--None.

Absent and excused--Bunderson, Schroeder. Total - 2.

Total - 35.

Whereupon the President declared **H 83** passed, title was approved, and the bill ordered returned to the House.

On request by Senator Noh, granted by unanimous consent, the following Statement of Legislative Intent for **H 83** was ordered spread upon the pages of the Journal:

STATEMENT OF LEGISLATIVE INTENT **H 83**

In approving **H 83**, the Idaho Senate is only authorizing a long-term commercial lease on the parcels of state lands described therein, with the expectation that any leases executed by the Board of Land Commissioners will best serve the interests of the endowed institutions. This action should in no way be interpreted by the public, potential investors, lenders, local citizens or others, as making any statement or endorsement as to the merits or risks of any development which may be undertaken as a result of or in conjunction with such leases.

/s/ Laird Noh, Chairman
Resources and Environment Committee

H 363 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Sorensen arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Gannon, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noh, Pearce, Richardson, Schroeder, Sorensen, Stennett, Sweet, Werk. Total - 29.

NAYS--None.

Absent and excused--Brandt, Davis, Geddes, Noble, Stegner, Williams. Total - 6.

Total - 35.

Whereupon the President declared **H 363** passed, title was approved, and the bill ordered returned to the House.

H 382 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Darrington arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Bunderson, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Gannon, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noh, Pearce, Richardson, Schroeder, Sorensen, Stennett, Sweet, Werk. Total - 28.

NAYS--Burkett. Total - 1.

Absent and excused--Brandt, Davis, Geddes, Noble, Stegner, Williams. Total - 6.

Total - 35.

Whereupon the President declared **H 382** passed, title was approved, and the bill ordered returned to the House.

On request by Senator Little, granted by unanimous consent, all Senate bills were placed at the head of the Third Reading Calendar, followed by House bills, with **H 264** and **H 317** remaining at the foot of the Calendar.

On request by Senator Little, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Little, seconded by Senator Stennett, by voice vote the Senate adjourned at 12 noon until the hour of 9 a.m., Thursday, April 3, 2003.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary